DATUK YONG TECK LEE

v.

PUBLIC PROSECUTOR & ANOR.

HIGH COURT BORNEO, KOTA KINABALU
SYED AHMAD IDID J
[ORIGINATING SUMMONS NO. K 46 OF 1992]
16 OCTOBER 1992

CONSTITUTIONAL LAW: *Illegal procession - Assemblyman charged for participation and disobeying OCPD's order to disperse - Section 27(2), (5) of the Police Act 1967 - A fine of not less than RM2,000 and imprisonment not exceeding one year shall be imposed on an offender under s. 27(8) Police Act 1967 - If found guilty, Assemblyman automatically disqualified from Sabah State Legislature by virtue of art. 17(1)(e) of Sabah State Constitution - Section 27(8A) disallows any lenient sentence as provided under ss. 173A, 294 of Criminal Procedure Code - Plaintiff sought two declarations - First, that s. 27(8) was ultra vires arts. 8(1), 10(1) and therefore null and void under art. 4(1) of Federal Constitution for singling out Assemblymen from the general public for heavier differential punishment - Whether plaintiff deprived of the equal treatment provision under art. 8(1) - Second, that ss. 27(2), (5) of Police Act were ultra vires art. 10(1)(b) of Federal Constitution as the sections were prohibitive and not restrictive in nature - Whether s. 27(2), (5) deprived plaintiff's right to assemble under art. 10(1)(b) of Federal Constitution.*

The plaintiff, a Sabah State Assemblyman and a Deputy Chief Minister of Sabah, pleaded not guilty at the Magistrate's Court to charges under s. 27(2) and s. 27(5) of the Police Act 1967 ("the Act") for having participated in an unlawful procession and disobeying the OCPD's order to disperse.

Upon conviction, a fine not less than RM2,000 and a term of imprisonment not exceeding one year would be imposed under s. 27(8) of the Act thereby leading to his automatic disqualification from the Sabah State Assembly by virtue of Article 17(1)(e) of the Sabah State Constitution. Further he would also be disqualified under the Societies Act 1966 from holding office in any registered society for a period.

Therefore the plaintiff filed this originating summons on 8 May 1992 seeking the following relief from the High Court:

(a) that s. 27(8) was *ultra vires* Article 8(1) and Article 10(1) and therefore null and void under Article 4(1) of the Federal Constitution as it singled out Assemblymen from the general public for heavier differential punishment and therefore it deprived him of the equal treatment provisions under Article 8(1).

(b) that s. 27(8) and 27(5) of the Act were *ultra vires* Article 10(1)(b) of the Federal Constitution as they were prohibitive and not restrictive in nature, thereby infringing the plaintiff's right to assemble under Article 10(1)(b) of the Federal Constitution.

Held:

[1] Section 27(8) of the Act neither contravenes nor violates Articles 8(1) and -10(1) of the Federal Constitution and therefore not null and void under Article 4(1) of the Federal Constitution.

[2] As all the Assemblymen are treated equally in that they are punished alike under s. 27(8), then the question that s. 27(8) trangresses Article 8(1) and Article 10(1) did not arise. Article 8 of the Federal Constitution only guarantees that a person in one class should be treated the same as another person in the same class.

[3] Section 27(2) and 27(3) permits public gatherings to be held as long as the prerequisite licence had been obtained from the police who upon being satisfied that such assembly "is not likely to be prejudicial to the interest of security", would then issue the necessary licence. Therefore it is not *ultra vires* as the section is facilitative and regulatory and is designed to meet the requirements of Article 10(2) of the Federal Constitution which imposes restrictions on the right to assemble which are necessary in the interest of the security of the nation and public order.

[4] Section 27(5) of the Act was also not *ultra vires* the Federal Constitution as a proper reading of the subsection showed that intention remained an important element. Further, s. 27(5B) provided a defence to those found at the public gathering through innocent circumstances.

[Application for declarations refused with costs.]

Cases referred to:
Siva Segara v. PP [1984] 1 CLJ (Rep) 353 ***(foll)***
Madhavan Nair & Anor. v. PP [1975] 2 MLJ 264 ***(foll)***
Lau Dak Kee v. PP [1976] 2 MLJ 229 ***(foll)***
PP v. Ismail bin Ishak & Ors. [1976] 1 MLJ 183 ***(foll)***
Government of Malaysia v. V.R. Menon [1990] 1 MLJ 277 ***(refd)***
Malaysian Bar & Anor. v. Government of Malaysia [1987] CLJ (Rep) 185 ***(refd)***
Datuk Haji Harun bin Idris v. PP [1977] 2 MLJ 155 ***(refd)***
Shri Ram Krishna Dalima & Ors. v. Shri Justice S.R. Tendolkar & Ors. [1958] AIR SC 538 ***(foll)***
Lindsley v. National Carbonic Gas Co. [1911] 220 US 61 ***(foll)***
Michael Ben Anak Panggi v. PP [1979] 2 MLJ 65 ***(refd)***
PP v. Ooi Kee Siah & Anor. [1971] 2 MLJ 108 ***(refd)***
PP v. Fan Yew Teng [1975] 1 MLJ 176 ***(refd)***
PP v. Datuk Harun Idris (No. 2) [1977] 1 MLJ 15 ***(refd)***
PP v. Su Liang Liu [1976] 2 MLJ 128 ***(refd)***
PP v. Khong Teng Khen & Anor. [1976] 2 MLJ 166 ***(refd)***
PP v. Lau Kee Hoo [1983] 1 MLJ 157; [1983] CLJ (Rep) 336 ***(refd)***
PP v. Yee Kim Seng [1983] CLJ (Rep) 824 ***(refd)***
Ong Ah Chuan v. PP [1981] 1 MLJ 64 ***(refd)***
Southern Railway Co. v. Greene 216 US 400 ***(refd)***
Simon Runyowa v. The Queen [1967] 1 AC 26 ***(foll)***
Loh Kooi Choon v. Government of Malaysia [1977] 2 MLJ 187 ***(foll)***
State of Punjab v. Ajaib Singh, [1953] AIR SC 10 ***(foll)***
Siba Prasad Moda v. State of Orissa, [1951] AIR Orissa 259 ***(foll)***

Legislation referred to:
Constitution of the State of Johore, art. 17(1)(e)
Constitution of the State of Kedah, art. 47(1)(e)
Constitution of the State of Kelantan, art. 31(1)(e)
Constitution of the State of Malacca, art. 13(1)(e)
Constitution of the State of Negeri Sembilan, art. 50(1)(e)

Constitution of the State of Pahang, art. 20(1)(e)
Constitution of the State of Penang, art. 13(1)(e)
Constitution of the State of Perak, art. 31(1)(e)
Constitution of the State of Sabah, art. 17(1)(e)
Constitution of the State of Sarawak art. 17(1)(e)
Constitution of the State of Selangor, art 64(1)(e)
Constitution of the State of Terengganu, art 29(1)(e)
Criminal Procedure Code, ss. 173A, 294
Evidence Act 1950, s. 106
Federal Constitution, arts. 4(1), 8(1), 10(1)(b), (2), 44, 48(1)(e)
Penal Code, ss. 82, 141
Police Act 1967, s. 27(1), (2), (2A), (2B), (2C), (3), (5), (5A), (5B), (5C), (8), (8A)
Public Order (Preservation) Act 1958, s. 5(1)(a)

For the applicant/plaintiff - C.A. Skinner (M. Willie with him); M/s. Skinner Lind Robertson Willie Wong & Chin

For the respondent/defendant - Zaleha Zahari, SFC (Vong Poh Fah with her), AG's chambers

JUDGMENT

Syed Ahmad Idid J:

The plaintiff, an elected Legislative Assemblyman for the State Constituency of Likas, a Deputy Chief Minister of Sabah and Deputy President of Parti Bersatu Sabah, seeks relief from the Court by applying for:

(1) A declaration that s. 27(8) of the Police Act 1967 (Revised 1988) is *ultra vires* the Federal Constitution of Malaysia in that it contravenes Article 8(1) and Article 10(1) of the Federal Constitution and to that effect it is null and void under Article 4(1) of the Federal Constitution as it discriminates unfairly against such persons as the plaintiff and does not afford him equality under the law ("Application for Declaration No. 1");

and

(2) A declaration that ss. 27(2) and 27(5) of the Police Act are *ultra vires* the Federal Constitution in that they contravene Article 10(1)(b) of the Federal Constitution and to that effect are null and void under Article 4(1) of the Federal Constitution as the stated sections are prohibitive and not restrictive in nature ("Application for Declaration No. 2").

The plaintiff had pleaded not guilty on 21 December 1990 when he was served with a summons by the Kota Kinabalu Magistrates' Court calling him to answer two criminal charges that he:

(a) participated in an illegal procession on 11 October 1990 between 9.40 a.m. and 12.35 p.m. along Jalan Gaya, Kota Kinabalu, and disobeyed an order to disperse made by the Officer-in-Charge of the Police District, Encik Kamarrudin Alias; and also

(b) participated in an illegal procession that took place on the same day at about 12.35 p.m. along Jalan Gaya, Kota Kinabalu.

About one and a half years later, he filed the originating summons on 8 May 1992.

The plaintiff says that if he is convicted of either or both of these charges, he will be liable to punishment and sentenced under s. 27(8) of the Police Act 1967 (Revised 1988) "to a fine of not less than RM2,000 ... and imprisonment for a term not exceeding one year." Section 27(8A) disallows the application of ss. 173A and 294 of the Criminal Procedure Code which in effect means that anyone who offends against s. 27(3) or s. 27(5) is not eligible to be treated leniently by way of admonition, release on probation or on bond or discharged conditionally.

4. The plaintiff holds the view that:

(a) by the express provisions of s. 27(8) of the Police Act, the consequences of a conviction against him will be dire especially in his position as an Assemblyman, as it may entail his automatic disqualification from the Sabah State Legislature by virtue of Article 17(1)(e) of the Constitution of the State of Sabah:

(b) Additionally, the offender will be disqualified under the Societies Act 1966 from holding office in any registered society for the period of time as stated therein.

Whether ss. 27(2) and 27(5) are ultra vires?

Let me first deal with the Application for Declaration No. 2. Mr. Skinner, of Counsel for plaintiff, says: "Section 141 Penal Code criminalises an unlawful assembly and rightly so." He adds that "where five or more persons gather together for the purpose of say, attending a concert or cinema, that is, an innocent assembly, no offence under the Penal Code is committed. It preserves the right to peaceable assembly." He then refers to s. 5(1)(a) of the Public Order (Preservation) Act 1958 and states. "The effect of these legislations do not infringe upon the right guaranteed by the Constitution as such but merely restrict the assembly meeting or procession for the preservation of security and public order." But as for ss. 27(2) and 27(5) of the Police Act, Mr. Skinner provides an illustration: "e.g.: If three school boys decide to go to the cinema for a film show, they cannot do so. It is illegal to do so unless they have a licence from the OCPD to do so. Any steps taken in furtherance of the intention (without a licence) would render the meeting or assembly illegal and any person taking part thereto shall be guilty of an offence." In support, Mr. Skinner quotes extensively from *Siva Segara v. PP* [1984] 1 CLJ (Rep) 353.

I am unable to accept this contention or illustration in the face of the fact that thousands of patrons, without any licence, frequent the cinemas and other functions every day and night in Malaysia and the police do not charge them under the Act or the Penal Code. Additionally, I am of the view "three **individuals**" mentioned by s. 27(2A), (2B) and (2C) are in their representative capacity and are not to be confused with the "three or more **persons**" in s. 27(5)(b). But assuming for one moment that the three school boys enter the cinema hall and are met by a hundred other people whom they do not know, and who are bent on having an illegal meeting and not watching the film. The authorities charged with the responsibility of maintaining law and order and public peace rush in. The school boys, if they are under ten years of age, enjoy protection under s. 82 of the Penal Code. Additionally they and others over 10 years in age have a defence in two other instances: firstly, when they follow the route and/or time set by the police for the assembly or meeting; or secondly they disperse when the police so order.

There is yet a third way out. After the *Siva Segara's* judgment. Parliament amended the Police Act by adding subsections 5A, 5B and 5C. See Police (Amendment) Act 1987.

Any comparison of the three subsections does not commend itself as subsection 5A only applies after the elements of subsection 5 are fulfilled. The scenario is this: Mr. X intends to convene or collect an assembly (or meeting or form a procession). It is up to those found with Mr. X to discover if any licence had been obtained. Illustration (b) of s. 106 of the Evidence Act may be relevant. Mr. X does not obtain a licence. Anyone found in cohort with Mr. X is "deemed" guilty. See s. 27(5)(a). But anyone else who, through innocent circumstances, is found there at has a defence. See s. 27(5B). Parliament had thought out Mr. Skinner's fears and accordingly provides for such an eventuality.

Mr. Skinner contends that the new subsection (5A) of s. 27 of the Police Act renders knowledge of persons charged to be irrelevant and that the inevitable effect of the Police Act as amended is "... that it makes the exercise of the (fundamental) right ineffective and illusory ..." And so Counsel is of the opinion that the Police Act **prohibits** absolutely the meeting, assembly or procession at its inception. But is this true? Can the law be so dehumanising?

Article 10(1)(b) of the Federal Constitution confers the right of assembly but subject to restrictions necessary or expedient in the interest of the security of the nation or any state or of public order. Plaintiff concedes that freedom of assembly is not absolute. See plaintiff's affidavit at para. 8.

Several challenges have been levelled against s. 27 of the Police Act. In *Madhavan Nair & Anor. v. PP* [1975] 2 MLJ 264. Chang Min Tat J held that it is the OCPD's duty ... to preserve public order in, and the security of, the district in particular and the country at large. Clearly this he **can best do by prevention rather than detection**. In *Lau Dak Kee v. PP* [1976] 2 MLJ 229, Mohamed Azmi J (as His Lordship then was) says: "In my view pursuant to Article 10(2) of the Federal Constitution, Parliament has by law conferred on the police the power to regulate public assemblies and meetings." Puan Zaleha, learned Senior Federal Counsel, observes that both these cases were in respect of the exercise of the power. Nowhere is there a serious challenge that because the police have the power to refuse a licence, this makes the section unconstitutional as it means prohibiting meetings, assemblies, etc., which the Constitution guarantees.

Section 27(2) provides that persons who intend to convene or collect any assembly or meeting or form a procession should make prior application for a licence. It says further that when the "police officer is satisfied that such assembly, meeting or procession is not likely to be prejudicial to the interest of security, he (the police officer) **shall** issue a licence." (Emphasis is added). So indeed it is up to the applicant to satisfy the police officer of the requirements of this section and by doing so, the applicant complies with the law. Section 27(1) places the burden on the police but subsection (2) shifts the duty on to the applicant. The law appears to let the individuals or organization show that the assembly, meeting or procession is not likely to be prejudicial to the interest of security or that it will not excite disturbance of the peace. When that satisfaction is achieved, the police issue a licence (... he **shall** issue ...). The section does not appear to me to be prohibitive. The right to assemble is therefore not illusory. The existence of meetings, assemblies and processions throughout the country from time to time attests to this. Anyone can associate but subject to certain restrictions. In my opinion, s. 27(2) is not *ultra vires* the Federal Constitution as the section is facilitative and regulatory and is designed to meet the requirements of Article 10(2).

Section 27(5), or the "deeming provision" provides that any assembly meeting or procession which takes place without a licence [5(a)] or where three or more persons taking part neglect or refuse to obey police order as to dispersal or to routing or timing [5(b)] becomes an unlawful assembly. I am of the view that the subsection should not be read disjunctively or independently of the others as that may mislead us to the incorrect intention of the legislature. The sense and meaning of the law can be collected only by comparing one part with another and by viewing all the parts together as a whole and not one part only by itself. In subsection 5(a), intention remains a matter of importance as it relates to s. 27(2): "Any person **intending** ..." and subsection 5B provides that any person whose presence in the unlawful assembly, meeting or procession came about through innocent circumstances has a defence. Additionally intention is again an ingredient "... that he had no intention to be otherwise associated ..." On this alone, Mr. Skinner's fears are unfounded. I am of the opinion, therefore, that s. 27(5) of the Police Act is not *ultra vires* the Federal Constitution.

From this discussion, there does not appear to be any sound foundation which can prove that ss. 27(2) and 27(5) of the Police Act contravene Article 10(1)(b) of the Federal Constitution. Accordingly, I am, of the view that the Application for Declaration No. 2 fails.

Amendments to the Police Act:

The amendments which became effective from, 8 January 1988 were designed to overcome some of the deficiencies highlighted in (1) *PP v. Ismail bin Ishak & Ors.* [1976] 1 MLJ 183 where Harun J (as His Lordship then was) said:

> It is my considered view that it was not the intention of the legislature that all persons who are merely **found** at an assembly for which no licence had been issued under s. 27 of the Police Act shall be guilty of an offence. If so, it would have said so and employed the words of s. 144 of the Penal Code which provides 'any person who **attends, takes part in or is found** at any unlawful assembly'.

And in (ii) *Siva Segara v. PP* [1984] 1 CLJ (Rep) 353 where Abdul Hamid CJ (Malaya), (as His Lordship Tun LP then was) said at p. 356:

> After careful consideration of the views expressed by the learned Judge and his conclusion we accept that there was no expressed reference to knowledge or intention in s. 27(5)(a) of the Act, however we are unable to say that an assembly, meeting or procession simpliciter which takes place without a licence becomes in law unlawful.

Whether s. 27(8) is ultra vires:

Let me now deal with the Application for Declaration No. 1 of Mr. Skinner's "first attack". As far as the plaintiff is concerned, he is not just anybody. He is an Assemblyman and as such he will be affected by s. 27(8) of the Police Act in that he suffers the consequence of being disqualified from being an Assemblyman or holding office in a political party, which same consequence is not suffered by others taking part in the procession. He therefore believes that s. 27(8) of the Police Act 1967 was enacted especially to single out from the general public for differential treatment, one class of persons that is, Members of Parliament and State Assemblymen. He further believes that such legislation is discriminatory of persons such as himself since he is deprived of his constitutional rights under Article 8(1) of the Federal Constitutional which states: "All persons are equal before the law and entitled to the equal protection of the law." These cases: (1)

Government of Malaysia v. V.R. Menon [1990] 1 MLJ 277; (2) *Malaysian Bar & Government of Malaysia* [1987] CLJ (Rep) 185; (3) *Datuk Haji Harun bin Idris v. PP* [1977] 2 MLJ 155 are cited in plaintiff's submission.

When there is a challenge to the constitutionality of a section of the law or statute, the Court considers the matter in the following light:

(a) Is s. 27(8) of the Police Act discriminatory of the plaintiff?;

(b) If it is discriminatory, is it permissible? If it is not permissible then it must be struck down. In deciding whether or not it is permissible, the Court considers:

(i) Is the classification (or categorization) founded on an intelligible differentia? I should add that even where there is a differentia, the question we should address ourselves is, is the difference in the treatment acceptable or justifiable? and;

(ii) Whether the differentia has a rational relation to the object of the Police Act?

I am prepared to hold that even discriminatory law is acceptable if the law is "reasonable" or permissible". See *Shri Ram Krishna Dalima & Ors. v. Shri Justice S.R. Tendolkar & Ors.* AIR [1958] SC 538. It is abundantly clear that individuals in a community differ and are treated differently in many respects such as, *inter alia*, age, sex, wealth, occupation, race and religion. See *Malaysian Bar & Anor. v. Government of Malaysia* [1987] CLJ (Rep) 185. **Any law made by a legislature must of necessity involve the making of a choice and differences as regards its application in terms of persons**, time and territory. See *Lindsley v. National Carbonic Gas Co.* [1911] 220 US 61.

I agree with Mr. Skinner that this "punishing section" (Section 27(8)) seems innocuous enough. When it sets a **minimum fine of RM2,000 that has to be imposed on a conviction** and comparing the plaintiff with ordinary men who are not Assemblymen, then the section in its effect seem to single out the plaintiff. This is because if plaintiff is convicted either on his own plea of guilty or is found guilty after a trial, the Magistrates' Court cannot impose a lenient sentence like under s. 173A or 294 of the Criminal Procedure Code. The Magistrate has to sentence the convicted person to **a minimum** of RM2,000 and not more than RM10,000 and may also impose imprisonment for a term not exceeding one year.

Though this point is not canvassed, it appears that Sabah Constitution Article 17(1)(e) is the same as for Sarawak's and Johore's Article 17(1)(e). The wordings are also the same in the Constitutions of Malacca and Penang Article 13(1)(e), Pahang 20(1)(e), Terengganu 29(1)(e) Kelantan and Perak 31(1)(e), Kedah 47(1)(e), Negeri Sembilan 50(1)(e) and Selangor 64(1)(e). So if indeed Parliament discriminates, it first of all discriminates against its own members. See Article 48(1)(e). If there is discrimination, it is not against the Assemblymen of Sabah alone. All Assemblymen of all the States and Members of Parliament suffer the same fate ... except for Perlis which disqualifies her Assemblymen only when they are imprisoned for not less than two years.

Plaintiff in our case today urges the Court to hold the impugned section as unconstitutional because:

(a) there is no good reason why Members of Parliament or Assemblymen should be singled out for extra punishment;

(b) there is no evidence that Assemblymen have been inciting or responsible for offences under the Police Act or s. 27 thereof;

And he submits that the only purpose for the distinction is to enable disqualification under the laws.

(a) There appears to be a parallel case in *Michael Ben Anak Panggi v. PP* [1979] 2 MLJ 65 where one of the questions posed was whether a sentence directed not to punishment, not to deterrence, not to rehabilitation but exclusively to disqualifying an accused person from continuing to be a member of a Legislative Assembly (Dewan Undangan Negeri Sarawak) and from standing for an elective office, is unconstitutional and in breach of the privileges of the said (Dewan) Assembly.

(b) Such sentences have in fact been imposed by the Courts in many cases, e.g. *PP v. Ooi Kee Siah & Anor.* [1971] 2 MLJ 108; *PP v. Fan Yew Teng* [1975] 1 MLJ 176; *PP v. Datuk Harun Idris (No. 2)* [1977] 1 MLJ 15.

(c) In *Michael Ben's*, after the conviction of the appellant, the Court held that:

> ... in an appropriate case it is empowered to impose a sentence that would disqualify a person from membership of Parliament or State legislature without contravening Article 53 of the Federal Constitution or Article 19 of the Sarawak Constitution.

The principles to apply in questions raised by plaintiff are those laid down in two cases:

(a) *PP v. Su Liang Liu* [1976] 2 MLJ 128 at p. 130 Hashim Yeop Sani J (as the CJ Malaya then was) says:

> ... the first duty of the Court ... is to examine the purpose and policy of the statute ... In its approach to the problem the Court ought, *prima facie,* to lean in favour of constitutionality and should support the legislation if it is possible to do so on any reasonable ground.

and

(b) In *PP v. Khong Teng Khen & Anor.* [1976] 2 MLJ 166 at 170, Tun Suffian, then LP, in his judgment states:

> ... All that Article 8 guarantees is that a **person in one class should be treated the same as another person in the same class** ... (Emphasis mine).

To examine the constitutionality of the section, learned Senior Federal Counsel cited several cases which concern capital punishment and mandatory minimum, e.g. *PP v. Lau Kee Hoo* [1983] CLJ (Rep) 336; *PP v. Yee Kim Seng* [1983] CLJ (Rep) 824 and Lord Diplock in his judgment in *Ong Ah Chuan v. PP* [1981] 1 MLJ 64 at p. 72 states:

> All criminal law involves the classification of individuals for the purposes of punishment, since it affects those individuals only in relation to whom there exists a defined set of circumstances - the conduct and, where relevant, the state of mind that constitute the ingredients of an offence. **Equality before the law and equal protection of the law require that like should he compared with like ...**

PP v. Su Liang Liu [1976] 2 MLJ 128 at p. 130, says that:

> the classification may be founded on different bases, namely, geographical or according to objects or **occupations** or the like.

What troubles me are the uncertainty in the rulings in (i) the United States Supreme Court which observes that "equal protection of laws" means "subjection to equal laws applying alike to all in the situation" See *Southern Railway Co. v. Greene* 216 US 400; and (ii) by the Federal Court in *PP v. Lau Kee Hoo* [1983] 1 MLJ 157 where Held [5] states that:

> ... What Article 8(1) assures to the individual is the right to **equal treatment with other individuals in similar circumstances**". At p. 162, Tun Suffian then LP says: 'It prohibits laws which require that **some individuals within a single class** should be treated by way of punishment more harshly than others.

These words are the same as those of Lord Diplock in the Privy Council case of *Ong Ah Chuan v. PP* (*supra*). We must examine whether:

(i) "a person in one class should be treated the **same** as another person in the same class" is on all fours with;

(ii) the principle of "equal treatment with other individuals in similar circumstances." This is the moot point in these proceedings.

But thankfully Lord Diplock adds:

> ... it does not forbid discrimination in punitive treatment **between one class of individuals and another class** in relation to which there is some difference in the circumstances of the offence that has been committed.

Tun Suffian, then LP, in *PP v. Khong Tong Khen & Anor*. [1976] 2 MLJ 167 at p. 170 explains that "... a juvenile must be tried like another juvenile ... and a millionaire (pays) the same income tax as another millionaire". In as much as Mr. Skinner has done his best to deflect the intense concentration of decisions against the plaintiff, the clarity of the situation prevails. All of us can understand this: that where an uneducated clerk and an influential leader of society were arrested for the same offence, the Courts must give consideration to imposing different sentences based on the culpability of each. The master planner will suffer a higher degree of punishment. Likewise, a manager or staff of a corporation who commits a crime not only is punishable under the law but may lose his employment as well. This is not unconstitutional as one had to answer for the consequences which must necessarily flow from one's employment, position, station, or status. This accords with my finding that all Assemblymen will be treated equally with other persons in that class. Hence, the existence of different treatment for millionaires, juveniles, women and persons of status or of different occupations.

Lord Morris of Borth-Y-Gest at p. 49 of *Simon Runyowa v. The Queen* [1967] 1 AC 26 explains:

> ... A legislature must assess the situations which have arisen or which may arise and form a judgment as to what laws are necessary and desirable for the purposes of maintaining peace, order and good Government. It can hardly be for the Courts unless clearly so empowered or directed to rule as to the necessity or propriety of particular legislation. Nor can it be for the Courts without possessing the evidence upon which a decision of the legislature has been based to overrule and nullify the decision. As Quenet ACJ said (in *Gundu and Sambo's* case), if once laws are validly enacted it is not for the Courts to adjudicate upon their wisdom, their appropriateness or the necessity for their existence.

Conclusion

I am of the view that the Court's task in considering the legislature's power to make laws, e.g. the Police Act today, is to inquire whether the statute trangresses the limits set in the Constitution. From previous challenges and the matters which learned Counsel raises, I am not able to say there is any transgression of our Constitution. I am, also not able to say that the plaintiff who attacks the validity of the legislation with the materials he places before the Court succeeds in showing that the section(s) of the Police Act is or are arbitrary and unsupportable. The question whether the impugned Act or its section is unjust is a matter to be debated and decided by Parliament and it does not require judicial determination. See Raja Azlan Shah FJ (as His Majesty then was) in *Loh Kooi Choon v. Government of Malaysia* [1977] 2 MLJ 187. It is not for the Court to consider the propriety or the wisdom of the provision of the statute. The legislative authority is vested in Parliament under Article 44. A legislature may have to consider questions of policy, frequency (of the offences), density (of population) and prevention in regard to punishment for crime. There may be cases where Parliament may deem it necessary to decree that for a particular crime, e.g. rape a fixed minimum sentence is to follow. This seems to me to be so in the Police Act.

It must be presumed that the legislature understands and correctly appreciates the need of its own people and that its laws are directed to problems made manifest by experience and that even where there is discrimination such is based on adequate grounds. What may appear as "discrimination" in this instance may just be a method which Parliament adopts to nurture good conduct of Parliamentarians and Assemblymen (and leaders of societies). That being so, I cannot say it is unreasonable.

While I understand plaintiff's challenges to the validity of the Police Act, the principles and the law are sufficiently clear as to the decision I can make. It is apparent that the RM2,000 floor limit fine imposed by s. 27(8) of the Police Act may be intended to keep Parliamentarians and Assemblymen on the floor in the august Houses and keep them away from the streets. Any law which helps towards ensuring that law-makers do not become law-breakers, is, to my mind, permissible. The members of one class, or Assemblymen in this case, are treated equally. The object (of the Act) is to discourage illegal assemblies or processions. There is therefore a clear nexus between the two. I am somewhat fortified in my belief that "an award of different sentence for the same offence according to the circumstances of each case does not infringe the principle of equality before the law." Per Yusoff J in *Michael Ben Anak Panggis* (*supra*). *State of Punjab v. Ajaib Singh*, AIR [1953] SC 10 and *Siba Prasad Moda v. State of Orissa,* AIR [1951] Orissa 259.

On the totality of the evidence and the preponderance of legal principles, I hold that s. 27(8) of the Police Act 1967 (Revised 1988), neither violates nor contravenes Articles 8(1) and 10(1) of the Federal Constitution and is therefore not null and void under Article 4(1) of the Federal Constitution. Accordingly, the application for Declaration No. 1 also fails.

Before I conclude, it is pertinent that I caution all parties that nothing in this judgment is to be taken as deciding or imputing the guilt or otherwise of the plaintiff in respect of either or both of the charges levelled against him. Such matters or questions can be determined at the Magistrates' Court. The fact that plaintiff has seen it fit to move this Court on his application can mean that he is concerned for a proper and speedy trial.

Accordingly, the trial at the Magistrates' Court in this connection should proceed early as justice delayed is justice denied. I now dismiss plaintiffs originating summons dated 8 May 1992, with costs.

Also found at [1992] 4 CLJ 2247